IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 407 OF 2005

Sadashiv Devba Patil, since deceased
by his heirs
1) Smt.Parvati Sadashiv Patil & Ors. ...Appellants

Versus

Keshav Bhau Kamble(Mahar) ...Respondent

Shri A.Y.Sakhare, Sr.Advocate with Shri Dilip Taur
i/b Smt Varsha Palav for the Appellants.

CORAM : ANOOP V.MOHTA, J.

DATE : 15TH DECEMBER, 2005

P.C.

1. This is a Second Appeal, filed by the Appellant - Plaintiff, whereby challenge has been made to the judgment and decree passed by the Jt.Civil Judge, Junior Division, Kolhapur on 08-10-1996 in Reg.Civil Suit No.926 of 1992 whereby the Suit filed by the Appellant-Plaintiff for specific performance was dismissed and the IInd Additional District Judge, Kolhapur (Appellate Court) by its judgment and order dated 02-05-2003 in Reg.Civil Appeal No.53 of 1997 confirmed the same.

2. Based on the agreement dated 08-09-1973, the Suit was filed for specific performance with alternative prayer for adverse possession. Considering the material on record, even though, the Defendant failed to lead any evidence, both the Courts were right

in dismissing the suit on the ground of limitation. The Suit was admittedly filed on 09-10-1992, which was beyond period of limitation.

3. Such suit for specific performance beyond a period of three years, in no way supports the case of the Plaintiff to pray for specific performance. The law of specific performance is very clear, even if, the Suit is filed within three years, but, at a delayed stage the Court has discretionary power or may grant decree for specific performance. In the present case, the suit itself was filed beyond period of three years.

4. The Appellate Court has given finding that the plaintiff made some payment in consideration of the sale agreement. Assumed for a moment that the reasonings are in favour of the plaintiff, still considering the suit as well as the issues of specific performance, no discretionary power in any way can be exercised in favour of the Plaintiff.

5. The plaintiff's case of possession, even if accepted, still merely on the foundation of possession of the suit premises alongwith agreement that itself also cannot be the reason to grant the specific performance beyond the period of limitation.

6. The learned Counsel appearing for the Appellant strongly further contended that he had raised specific plea of adverse possession, which was not at all considered by the Trial Court. The Appellate Court has definitely considered that aspect of adverse possession and held that the Appellant - Plaintiff failed to prove title to the property by adverse possession. The moment party claims a specific performance of contract based on agreement of sale, and in the same suit if raised plea of adverse possession, in my view that plea itself need to be rejected, on simple ground that while entering into agreement a party accept other party as a seller means owner of the property and then based on the said foundation at later stage so called purchaser in no way can claim the title of the property on the basis of adverse possession. The declaration by the Plaintiff himself that the Defendant being owner while entering into agreement for the property in question has himself destroyed the case of plaintiff of adverse possession.

7. In this background, I see no reason to interfere with the concurrent findings given by the Courts below. Therefore, the Second Appeal is dismissed. No order as to costs.

(ANOOP V.MOHTA, J.)